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Supreme Court, U.S.
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In the Supreme Court of the United States

D. K. CHRISTIE,
Petitioner

v.

UNITED STATES OF AMERICA,
Respondent.

On Petition For a Writ Of Certiorari

to the United States Court of Appeals

for the Ninth Circuit

PETITION FOR A WRIT OF CERTIORARI

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52 pp

QUESTIONS PRESENTED

1. Whether the words "In God We Trust" on U.S. currency violate Petitioner's Free Exercise of Religion and/or Establishment Clause of First Amendment.

2. Whether Petitioner's unwanted contact with government prayer and Bible use at past and future presidential Inaugurations is an "injury," and violation of the Establishment Clause.

Federal laws including 1971 IRC Ruling 71-447 prohibit discrimination in all entities receiving 501(c)(3) tax-exempt status. Nativity Catholic Church forbids all females from its hierarchy while receiving 501(c)(3) tax-exempt status.

3. Whether granting tax-exempt status to a church which forbids females from positions of authority within its organization constitutes government support for gender discrimination in violation of Equal Protection under the Fifth Amendment.

4. Whether USA's failure to enforce federal and IRC anti-discrimination law upon Nativity Catholic constitutes unequal application of law and favored treatment of religion, in violation of the Establishment Clause.

5. Whether Petitioner has Article 1 Section 8 taxpayer standing to challenge tax exemptions given a church which practices discrimination.

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OPINIONS BELOW

The opinions of the court of appeals (App., *infra* 38a-41a) are unreported. The opinion of the district court (App., *infra* 27a-37a) is unreported.

JURISDICTION

U.S. District Court had original jurisdiction as the Complaint alleged violations of the First and Fifth Amendments. 28 U.S.C.A. 1331

The court of appeals' judgment was entered on March 21, 2002. (App., *infra,* 38a) A timely petition for rehearing en banc was denied on November 4, 2002. (App., *infra,* 41a) The jurisdiction of this Court is invoked under 28 U.S.C. Sec.1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED.

Art. 1, Sec. 8 U.S. Const: "Congress shall have the power to lay and collect taxes...to pay the Debts and provide for the common Defense and general Welfare of the United States;..."

Establishment and Free Exercise Clauses of First Amendment: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof;..."

Equal Protection under Due Process Clause of Fifth Amendment: "No person shall...be

deprived of life, liberty, or property, without due process of law;..."

26 USCA Section 501: Exemption from tax on corporations, certain trusts, etc.

(c) List of exempt organizations

(3) Corporations or any other community chest, fund or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary or educational purposes...

1971 Internal Revenue Code Revenue Ruling 71-447: Private schools which discriminate are "not charitable within common law concepts reflected in 170 and 501(c)(3)...Section 170, 2055, 2106 & 2522 of the Code, to the extent they provide deductions for contributions to...organizations organized and operated exclusively for charitable purposes, do not apply to contributions to any organization whose purposes are not charitable in the generally accepted legal sense...For the same reasons, section 501(c)(3) of the Code does not apply to any such organization.

STATEMENT

This case raises nationally important constitutional questions about:

I. "In God We Trust" on currency
II. Government sponsored prayer and Bible use in presidential Inaugurations
III. 501(c)(3) tax exemption for a church which practices gender discrimination.
IV. Art. I Sec. 8 taxpayer standing to challenge government support of discrimination.

Court of Appeals' decisions in this case are in direct conflict with the Supreme Court and Fifth and Seventh Circuits on: impermissible government use of religious mottoes and symbols; "injury" from government religious conduct; and revocation of tax exemptions from religious organizations which fail to comply with non-discrimination law binding all organizations with 501(c)(3) status.

The decision in this case denying Petitioner Art. 1, Sec. 8 taxpayer standing is in direct conflict with Supreme Court and Fifth and Seventh Circuits' decisions allowing taxpayer standing to challenge government support of religion and discrimination.

Only the Supreme Court can redress these direct conflicts between its own rulings and the contrary decisions made by the Ninth Circuit Court of Appeals in this case. This case squarely presents the above issues and the conflicts among the courts.

I. "In God We Trust" and Free Exercise

Petitioner claimed that the motto "In God We Trust" on U.S. currency violates her right to Free Exercise of Religion as she is forced to promulgate a state mandated profession of religious belief each time she circulates money. She claimed that the ruling in *Aronow v. US*, 432 F.2d 242(9th Cir. 1970) (national motto "In God We Trust" not establishment of religion) decided Establishment issues only and therefore did not set precedent on Free Exercise, citing *R.A.V. v. City of St. Paul, Minn.*, 505 U.S. 377, 386, 112 S.Ct. 2538, 2545 fn.5 (1992)(decisions are precedential only to issues actually decided).

Petitioner also claimed that the 33 year old *Aronow* is ripe for review on establishment grounds because it conflicts with more recent Supreme Court rulings which disallow government endorsement of religion. E.g. *County of Allegheny v. ACLU*, 492 U.S. 573 (1989).

Petitioner claimed that the Ninth Circuit's 1970 *Aronow* is in direct conflict with a 1994 Seventh circuit ruling against government use of a religious motto, "The World Needs God." *See Doe v. Montgomery County*, 41 F.3d 1156 (7th Cir. 1994) (sign over county courthouse entrance which reads "The World Needs God" held unconstitutional).

District court dismissed her Establishment and Free Exercise claims against the motto for failure to state a claim, citing *Aronow* alone, saying, "The Ninth Circuit has established that the "national motto and the slogan on coinage and currency, "In God We Trust" has nothing whatsoever to do with the establishment of religion." App., *infra*, 35a.

A. Court of Appeals affirms dismissal of establishment and free exercise challenge to "In God We Trust," citing *Aronow* only.

Relying solely on *Aronow*, Court of Appeals affirmed district court as having "properly dismissed (Petitioner's Establishment and Free Exercise) claims challenging the reference to religion in the national motto." App., *infra*, 39a.

II. Prayer and Bible use at Inaugurations

On January 20, 2001 Petitioner, a non-adherent, attended the Presidential Inauguration

in Washington, DC. She was seated among the guests on the Capitol Lawn as two government sponsored ministers asked the audience to bow their heads, each giving several minutes of sectarian prayer, invoking the blessing of "our heavenly Father", "Lord," the second saying "We dedicate this presidency to the only savior Jesus Christ," asking the audience to say "Amen."

The President then placed his hand on a Bible as he swore to uphold the Constitution.

To avoid disrupting others, Petitioner had no choice but to remain, an unwilling, silent participant in a government sponsored Christian service, consigned to "outsider" status by USA's choice of Christian ministers, prayers and Bible.

USA has an unbroken history of featuring prayer and the Bible in past Inaugurations. Since Petitioner plans to attend the 2005 Inauguration in Washington and does not want to participate in another unwanted sectarian religious service, she filed suit in district court for an injunction to enjoin government prayer and Bible use at future inaugurations.

Petitioner alleged that prayer and Bible use at Inaugurations violate the Establishment Clause of the First Amendment. She claimed standing from injury due to "outsider" status, citing *County of Allegheny v. ACLU*, 492 U.S. 573, 688 (1989): "...any government endorsement of religion as "invalid" because it "sends a message to non-adherents...that they are outsiders..." Also *Doe v. Montgomery*, 41 F.3d 1156 (7th Cir.1994); *Books v. City of Elkhart*, 79 F. Supp. 2d 979 (7th Cir.2000) *cert.den.*(2001).

District court ruled that "injury due to her "outsider" status is insufficient because it does

not state a personal, concrete and particularized grievance, citing *Valley Forge*. App., *infra*,33a.

A. Court of Appeals decision: "outsider" status insufficient injury for standing to challenge government prayer & Bible use

> Court of Appeals affirmed, stating, "The district court properly dismissed Christie's remaining claims for lack of standing because she failed to allege a personal, concrete and particularized injury," citing *Valley Forge*. App., *infra*, 39a.

III. Tax Exemptions granted a Church which violates Federal non-discrimination laws

26 U.S.C.A. Section 501(c)(3) allows tax-exempt status for charitable or educational entities, including religions. *Walz v. Tax Comm'n. of City of N.Y.*, 397 U.S. 664, 675 (1970) held that granting tax exemptions to religion was not establishment of religion. Petitioner's suit did not challenge the validity of this statute granting tax exemptions for religion. She agreed that religion may receive tax benefits on an equal footing with non-religion, as long as both are subject to the same regulations.

Petitioner challenged only the application of that valid statute to one particular church in her area, Nativity Catholic, in which women are members but are forbidden by papal law from all governing positions in the church, whether as priests, bishops or administrators. Petitioner claimed that Nativity has a right to practice gender discrimination under Free Exercise of Religion but USA is prohibited under Equal

Protection from subsidizing discrimination through tax exemptions, citing *Green v. Connally; Gilmore v. City of Montgomery, Alabama*, 94 S.Ct. 2416 (1974)(held that public funds or tax exemptions may not be granted to support private discrimination). Also *Norwood v. Harrison*, 413 U.S. 455 (1973)(held that state provision of textbooks to private schools which practiced and taught discrimination amounted to "state-supported discrimination."(text quoted).

A. Federal law prohibits discrimination in all entities receiving 501(c)(3) tax-exempt status

Federal law prohibits discrimination in all organizations receiving federal benefits. 1971 Internal Revenue Code (IRC) Revenue Ruling 71-447 specifically prohibits any organization receiving 501(c)(3) tax-exempt status from practicing discrimination. Pg.2 *supra.*

Petitioner claims that since Nativity Catholic practices absolute gender discrimination in its hierarchy, under this IRC Ruling, Nativity does not qualify for 501(c)(3) tax exempt status.

B. Supreme Court rules religion not allowed tax exemption if it discriminates

In *Bob Jones Univ. v. U.S.*, 461 U.S. 574 (1983) the Supreme Court ruled that religion must comply with IRC non-discrimination requirements to qualify for 501(c)(3) tax-exempt status. Bob Jones University, a Christian school, practiced racial discrimination based on its interpretation of the Bible. When the IRS revoked its 501(c)(3) status on grounds that discrimination violated IRC ruling 71-447, Bob

Jones University filed suit claiming the IRC rule against discrimination violated its right to Free Exercise of Religion. The Supreme Court, upholding the revocation of Bob Jones' tax exempt status held: "discrimination, though held on religious grounds, violates the intent of Title 26 Sec. 501(c)(3) that a tax exempt organization must not act contrary to established national policy."

In another case of a religious school practicing discrimination based on the Bible, *Goldsboro Christian School v. U.S.*, 459 U.S. 812 (later joined with *Bob Jones Univ.*), the Supreme Court upheld Internal Revenue Comm'n policy that "all charitable trusts...are subject to the requirement that the purpose of the trust may not be illegal or contrary to public policy...racial discrimination, though sincerely held on religious grounds, violated clearly declared federal policy and therefore must be denied federal tax benefits flowing from qualification under Section 501(c)(3)."

Current federal policy prohibits gender discrimination in all organizations receiving federal benefits. Nativity Catholic practices absolute gender discrimination in its hierarchy. Petitioner claimed that Nativity's choice to discriminate, though held on religious grounds, disqualifies it from 501(c)(3) status. Petitioner asked that USA revoke Nativity's tax-exempt status until such time as it complies with IRC and other Federal laws against discrimination.

C. Preferential application of law for religion

Petitioner claimed that USA's failure to equally enforce IRC non-discrimination rules

upon Nativity - rules which bind all entities, both religion and non-religion, seeking federal tax benefits under 501(c)(3) - constitutes favored treatment for religion in violation of the Establishment Clause; that equal tax benefits require equal compliance.

D. Supreme Court rules tax exemptions may not be granted to support discrimination

Petitioner claimed that USA's grant of tax exemption to a church practicing gender discrimination violates Equal Protection and is government support of gender discrimination, citing *Green v. Connally; Gilmore v. City of Montgomery,Alabama*, 94 S.Ct. 2416 (1974)(held that public funds or tax exemptions may not be granted to support private discrimination). Also *Norwood v. Harrison*, 413 U.S. 455 (1973)(held that state provision of textbooks to private schools which practiced and taught discrimination amounted to "state-supported discrimination."(text quoted).

E. Court of Appeals, citing *Walz*, dismisses Equal Protection and Establishment claims

Court of Appeals, citing *Walz* alone, "granting a tax exemption does not entangle government and religion" dismissed Petitioner's Equal Protection and Establishment claims for failure to state a claim. App., *infra*, 39a.

IV. Art.1, Sec.8 Taxpayer Standing: challenge to US support of religion and discrimination

The Supreme Court has allowed taxpayers standing under Article 1, Section 8 of the U.S.

Constitution to challenge government expenditures for religion or discrimination, *See Bowen v. Kendrick*, 487 U.S. 589 (1988); *Grand Rapids Sch. Dist. v. Ball*, 473 U.S. 373 (1985).

Petitioner asserted Article 1 Section 8 taxpayer standing to challenge application of a valid statute in an impermissible way, which meets requirements of the Supreme Court in *Bowen v. Kendrick* (upheld taxpayer standing to challenged the application of a congressional statute as it was applied by the executive branch) Justice O'Connor concurring at 2581:

> "questions involve a facially valid statute that appears to have been administered in a way which led to violations of the Establishment Clause."

Petitioner' s suit stated that she pays property, local, state and federal taxes, citing *Doe v. Beaumont Ind. Sch. Dist.*, 8 F.Supp.2d 596 (5th Cir. 1999)(taxpayer standing requires only that plaintiff pay taxes to relevant entity and those taxes be expended on disputed programs). She estimated amounts forfeited by impermissibly extending 501(c)(3) status to a non-qualifying church, Nativity.

The district court dismissed Petitioner's Equal Protection and Establishment challenges to government support of Nativity's gender discrimination and favored treatment of religion, ruling that Petitioner had failed to state a case citing only *Walz* (tax exemption for religion was not establishment of religion.) App., *infra*, 35a. The District Court did not address taxpayer standing, saying,

> "Because the Court finds that these charges fail to state a claim upon which relief may be granted, the Court does not address the

question of whether Plaintiff has standing to assert these claims as a federal taxpayer." App., *infra*, 35a.

A. Court of Appeals decision: Petitioner lacks taxpayer standing

Court of Appeals ruled that "Christie lacks standing as a federal taxpayer because her complaint failed to allege an injury resulting from Congress' exercise of power under the taxing and spending clause. *See Flast v. Cohen*, 392 U.S. 83, 102-03 (1968)." App. *infra* 39a-40a.

V. Court of Appeals' Decision summary: No injury, no standing, failure to state a claim

In summary, Court of Appeals:

1. Citing *Aronow* (held motto "In God We Trust" not establishment of religion), dismissed Petitioner's Establishment and Free Exercise challenges to "In God We Trust" for failure to state a claim. App., *infra*, 39a.
2. Citing *Valley Forge*, ruled that Petitioner's "outsider" status is not "personal, concrete and particularized injury" for standing to challenge government religious conduct at Inauguration. App., *infra*, 39a.
3. Citing *Walz* (tax exemptions for churches not establishment of religion) dismissed Petitioner's Establishment and Equal Protection challenges against tax-exempt status for a church which discriminates against women as failure to state a claim. App., *infra*, 39a.
4. Citing *Flast*, ruled that petitioner lacked taxpayer standing. App., infra, 39a-40a.

REASONS FOR GRANTING PETITION

I. Decision on "In God We Trust" conflicts with Supreme Court on government use of religion; Circuits divided on religious mottoes

A. Court of Appeals relied on 1970 Circuit case which conflicts with recent Supreme Court rulings disallowing government stamp of endorsement of religion

The decision by the Court of Appeals, citing its own 1970 ruling in *Aronow*, that the words "In God We Trust" have nothing to do with establishment of religion conflicts with recent decisions by the Supreme Court. *See Co. of Allegheny v. ACLU*, 492 U.S. 573 (1989) (disallowed a religious symbol given prominent display on government property); Doe v. *Santa Fe Ind. Sch. Dist.*, 530 U.S. 290 (2000) (disallowed prayer before high school football games); *Lee v. Weisman*, 505 U.S. 577 (1992) (disallowed prayer before graduation ceremony); The Supreme court ruled that all bear the stamp of government endorsement of religion and therefore violate the Establishment Clause.

Petitioner makes the claim that there can be no stronger stamp of government endorsement of religion than to stamp "In God We Trust" on every piece of U.S. currency.

1. Original Purpose of "In God We Trust" was religious; fails Lemon test

The original purpose of the motto "In God We Trust" was clearly religious, suggested by

clergy and adopted by Congress in 1954 specifically to declare that the US was a religious nation during the Cold War with atheistic USSR.

The 1970 Ninth Circuit ruling in *Aronow* is ripe for review by the Supreme Court, which has never ruled on the constitutionality of the motto. "In God We Trust" has never been subjected to the Lemon test, which would certainly disqualify it on the purpose prong, i.e., that the purpose of the motto is religious, and thus, it violates the Establishment Clause.

To suggest that this reference to God is merely rote and "de minimis," as one justice suggested in his dicta, is refuted by the recent furor over the 2002 Ninth circuit ruling that "one nation under god" is unconstitutional. See *Newdow v. U.S. Congress*, 292 F.3d 597 (9th Cir. 2002). If the word god has no religious meaning, what does?

B. Conflict among the Circuits: 1970 "In God we trust" valid, 2002 "one nation under God" and "The World Needs God" invalid.

Court of Appeals, relying on its own 1970 *Aronow* (held "In God We Trust" not establishment of religion) is in direct conflict with a 1994 decision by the Seventh Circuit that the words "The World Needs God" over the entrance to County Courthouse violate the Establishment Clause. *Doe v. Montgomery County*, 41 F.3d 1156 (7th Cir. 1994).

Further, this Ninth Circuit Court ruled in June 2002 that the words "under God" in the Pledge of Allegiance violate the Establishment Clause. *See Newdow*, supra.

Only the Supreme Court can resolve the conflict within the circuits which in 1970 allowed "In God We Trust" but in 2002 disallows "one nation under God" and "the World Needs God." The question of government sponsored mottoes and references to god have percolated through the lower courts for decades and the time is ripe for the Supreme Court to bring clarity and national unity to this divisive and recurring issue.

This case squarely presents the issue of government-declarations of religious belief, and a number of suits pending in the lower courts will turn on the resolution of government use of religion brought forward in this case. Given the national turmoil over "one nation under God", *Newdow* will undoubtedly be appealed to the Supreme Court. The ACLU is currently in district court also challenging the motto "In God We Trust."

C. Court of Appeals misapplication of *Aronow* to Free Exercise in conflict with Supreme Court that "decisions precedential only to issues actually decided"

Petitioner claimed that "In God We Trust" on currency was a violation of Free Exercise as she is forced to promulgate a state mandated religious belief each time she circulates money.

Citing only *Aronow* (held motto "In God We Trust" not establishment of religion) the Court of Appeals dismissed Petitioner's Establishment and Free Exercise challenges to the motto, ruling that Petitioner had failed to state a claim. App., *infra*, 39a.

Court of Appeals erred in applying *Aronow* as precedent against her Free Exercise claim. Free Exercise of Religion was never at issue in *Aronow*, was never addressed by the courts in *Aronow;* thus *Aronow* does not set precedent against a Free Exercise claim such as Petitioner's. Petitioner cited *R.A.V. v. City of St. Paul, Minn.*, 505 U.S. 377, 386, 112 S.Ct. 2538, 2545 fn.5 (1992)(Supreme Court decisions precedential only to issues actually decided):

> "It is of course contrary to all tradition of our jurisprudence to consider the law on (a) point conclusively resolved by broad language in cases where the issue was not presented or even envisioned."

To apply *Aronow*, an establishment only case, as precedent against Petitioner's Free Exercise challenge conflicts with the Supreme Court ruling in *R. A. V.* supra, which does not allow courts to extend a decision as precedential to an issue not presented in the cited case.

II. Government Religious Conduct at Presidential Inaugurations

A. Court of Appeals decision in direct conflict with Supreme Court on "injury" from government religious conduct

Petitioner claimed that as a non-adherent, unwanted contact with several minutes of Christian religious services and Bible use at past and expected at future Inaugurations she plans to attend, makes her feel like an "outsider;" that USA publicly announcing "we dedicate this

Presidency to Jesus Christ, the only savior" and choosing the Bible alone upon which to swear the oath of office excludes her as a non-Christian from full participation in Inaugural ceremonies.

Court of Appeals dismissed her claim ruling that "injury" from "outsider" status during this government religious conduct was not "a personal, concrete and particularized injury" to allow standing, citing *Valley Forge.* App., *infra,* 39a.

This Court of Appeals' decision is in direct conflict with the Supreme Court in *Co. of Allegheny* at 688:

> "...any government endorsement of religion as "invalid" because it "sends a message to non-adherents...that they are *outsiders*... and a message to adherents that they are favored members of the political community."

B. Court of Appeals' Decision Conflicts with Other Circuits on "injury in fact" for standing

Court of Appeals' decision that Petitioner's unwelcome contact with government religious conduct was not an injury in fact sufficient to give her standing is in direct conflict with rulings by the Seventh Circuit and even one of its own Ninth Circuit rulings. *See Doe v. Montgomery,* 41 F.3d(7th Cir. 1994) at 1159-60:

> "allegations that plaintiff must come in direct and unwelcome contact (with sign "the world needs God)over entrance to courthouse to fully participate as a citizen of their county

were sufficient to show plaintiff suffered injury in fact. 'Direct and unwelcome exposure to a religious message cannot be distinct from "injuries" of other plaintiffs who have standing to bring claims under Establishment Clause" which meets "... Supreme Court requirement for standing when plaintiff forced into contact with religious conduct through participation in government." Also, "When government has unconstitutionally aligned itself with religion, standing may be based on finding that plaintiff has been injured due to his or her not being able to freely use public areas."

See ACLU of Illinois v. City of St.Charles, 794 F.2d 265, 267-69(7th Cir.1986); *Ellis v. City of La Mesa*, 990 F.2d 1518, 1523 (9th Cir. 1993)(held unconstitutional Latin cross as symbol of Christianity on public land); *Books v. City of Elkhart*, 79 F.Supp.2d 979 (7th Cir.2000) *cert. denied* (2001)(held unconstitutional monument of Ten Commandments outside city hall).

III. Tax Exemptions for church practicing gender discrimination

A. Decision in direct conflict with Supreme Court in *Bob Jones Univ.* which disallows tax exemptions for religion which discriminates

This Court of Appeals' ruling allowing tax exemption for a religious organization which practices discrimination is in direct conflict with the Supreme Court ruling in *Bob Jones Univ.* which ruled that discrimination, though held on religious grounds, disqualified a religious

organization from 501(c)(3) tax-exempt status. Supreme Court upheld IRS's revocation of the religious school's tax exemption.

B. Court of Appeals' decision conflicts with Supreme Court's which do not excuse religion from compliance with federal law

Court of Appeals decision allows Nativity Catholic to continue its non-compliance with IRC anti-discrimination conditions binding all those seeking government benefits.

Supreme Court in *Bowen v. Roy*, 476 U.S. 693 (1986):

> "...religious beliefs may not excuse compliance with conditions binding all others seeking government benefits, ((those) ...who seek benefits from Government and who assert that, because of certain religious beliefs, they should be excused from compliance with a condition that is binding on all other persons who seek the same benefits from the Government." See also *Hamilton v. Regents of Univ. of Calif.*, 293 U.S. 245 (1934)(holding that those who take advantage of government educational opportunity may not on grounds of religious belief insist that they be excluded from prescribed (military) courses).

This case squarely presents the conflict between the Supreme Court rulings in *Bowen* and *Hamilton* supra which bind religion to equal compliance with federal regulations and the ruling by this Court of Appeals which excuses religion from equal compliance with conditions binding all those seeking federal benefits.

C. Conflict with Supreme Court which disallows tax exemptions for discrimination

Court of Appeals' decision allowing tax exemptions for Nativity, which practices discrimination, is a direct conflict with the Supreme Court in *Green v. Connaly*, 330 F. Supp at 1156, (D.DC) aff'd mem.sub.non.*Coit v.Green*, 404 U.S. 997, 92 S. Ct. 564, 30 L.Ed.2d:

> "The (IRS) Code requires the denial and elimination of Federal tax exemption for racially discriminating private schools and of Federal income tax deductions for contributions to such schools." Also *Gilmore v. City of Montgomery*: "Any tangible government assistance is constitutionally prohibited if it has significant tendency to facilitate, reinforce and support private discrimination."

Nativity has a right to discriminate but USA may not subsidize gender discrimination by granting Nativity tax exemption. *See Norwood v. Harrison*, 413 U.S. 455 (1973):

> "That the Constitution may compel toleration of private discrimination in some circumstances does not mean that it requires state support for such discrimination. When a necessary expense is borne by the State, the economic consequence is to give aid to the enterprise."

D. Court of Appeals erred, applying *Walz*, an Establishment only case, as precedential against an Equal Protection claim.

Petitioner claimed that USA's allowing Nativity to retain tax exempt status while Nativity prohibits all women from its hierarchy is government support of gender discrimination, a violation of Equal Protection. Court of Appeals dismissed this Equal Protection claim relying solely on *Walz*, which holds precedence solely against establishment claims. To apply *Walz* against an Equal Protection claim is contrary to the Supreme Court ruling in *R.A.V. v. City of St. Paul*, supra that decisions are precedential only to issues actually decided

E. Court of Appeals erred, misapprehended claim

Court of Appeals misapprehended Petitioner's claim against tax exemption for Nativity Catholic as a challenge to all tax exemptions for religion. Court of Appeals, citing *Walz*, ruled on the validity of including religion under the 501(c)(3) statute, which was not challenged by Petitioner. Petitioner was not challenging the constitutionality of tax exemptions applied to all religion, but only tax exemption applied to one particular organization, which happens to be a religion, and not because it is a religion but because that organization discriminates against women.

Walz ruled only on the constitutionality of the 501(c)(3) statute as applied to religion. Petitioner is not challenging the validity of that statute, only alleging an impermissible

application of the valid 501(c)(3) statute to an organization which does not qualify solely because of its discrimination practices.

IV. Taxpayer Standing to challenge USA's support of religion, discrimination

A. Court of Appeals' decision in direct conflict with Supreme Court rulings which allow Art. 1, Sec. 8 taxpayer standing

26 U.S.C.A. Section 501(c)(3) is a statute passed by Congress under its powers to tax and spend given by Article 1 Section 8 of the Constitution. Petitioner never challenged the validity of this 501(c)(3) statute nor the constitutionality of applying it to religion. She challenges only the application of that valid statute to one particular organization, Nativity Catholic and only on the grounds that Nativity does not qualify because it discriminates.

1. Standing to challenge impermissible applications of valid statutes.

"The Supreme Court clarified that taxpayer standing exists to challenge the executive branch administration of a taxing and spending statute." *U.S. Catholic Conference v. Baker*, 885 F.2d 1020 (2nd Cir.1989) at 1027citing *Valley Forge*. Taxpayers have standing to challenge how programs authorized by Congress are being disbursed. *See Bowen v. Kendrick*, 487 U.S. 589 (1988)(federal taxpayers have standing to raise Establishment Clause claims against exercises of congressional power under the taxing and spending powers of Article 1, Section 8).

In addition, numerous cases have upheld the validity of statutes but allowed challenges to their use. *See Grand Rapids Sch. Dist. v. Ball*, 473 U.S. 373 (1985) (upheld the validity of a statute granting federal aid to schools but, as it was applied almost exclusively to religious schools, the application was impermissible); *Tilton v. Richardson*, 403 U.S. 672 (1971) at 676 (not questioning the standing of taxpayer plaintiffs to raise Establishment Clause challenges, even when their claims raised questions about the administratively made grants); *Hunt v. McNair*, 413 U.S. 734 (1973) at 735-36 (not questioning standing of state taxpayer to file suit against state executive in an "as applied" challenge); *Roemer v. Maryland Public Works*, 426 U.S.(1976) at 744 (same).

Petitioner claims standing like above plaintiffs to challenge the impermissible "application" of a valid statute (501(c)(3)) in a manner which violates Equal Protection and/or Establishment Clause.

2. Standing to challenge government support of religion or discrimination

Court of Appeals' decision that Petitioner lacks standing as a federal taxpayer to challenge tax expenditures (and forfeitures) for government support of discrimination and favored financial treatment of religion is in direct conflict with the Supreme Court which granted taxpayer standing to challenges under Article 1 Section 8 in *Flast v. Cohen*, 392 U.S. 83 (1968) (allows federal taxpayer standing to challenge government expenditures which violate Establishment and Equal Protection Clauses; *Doremus v. Brd of*

Ed.of Borough of Hawthorne, 342 U.S. 429, 434 (1952):"Injury required for taxpayer standing is from improper expenditures of tax revenues... Any disbursal of the state fisc for the promotion of religion is a violation of the Establishment Claus."; *Grand Rapids Sch. Dist. v. Ball*, 473 U.S. 373 (1989)(taxpayer Establishment Clause challenges to programs aiding non-public schools); *Bowen v. Kendrick*, 487 U.S. 589 (1988)(upheld taxpayer standing to challenge the application of a congressional statute as it was applied by the executive branch).

B. Court of Appeals decision conflicts with other Circuits on taxpayer standing

Court of Appeals decision that Petitioner lacks taxpayer standing because she has failed to state a claim under Art. 1, Sec. 8 is in direct conflict with other Circuits. Her complaint identified her as a taxpayer forced to subsidize gender discrimination through tax exemptions given Nativity. Her opposition papers expanded on this claim, specifically claiming taxpayer standing under Article 1 Section 8, challenging not the validity of 501(c)(3) but its application to one non-qualified church.

She specifically established a nexus between USA's illegal forfeiture of Nativity's taxes and an increase in her own taxes - a "dollars and cents" injury - from improper forfeiture of tax revenues for a non-qualifying church, thereby meeting the standing requirement held in *Doe v. Madison School Dist.*, 177 F.3d 789, 794 (9th Cir. 1999)(quoting *Doremus v. Brd. of Ed.*, 342 U.S. 429, 434

(1952): "Injury required for taxpayer standing is from improper expenditures of tax revenues..."

1. Court of Appeals relied on 1968 *Flast*, ignored 1988, 1985 Supreme Court decisions

Court of Appeals dismissed Petitioner's claim of taxpayer standing (App.*infra*, 40a) citing only *Flast* (1968) without reference to more recent, broader standards allowing taxpayer standing set by the Supreme Court in *Bowen v. Kendrick*, 487 U.S. 589 (1988)(federal taxpayers have standing to raise Establishment Clause claims against exercises of congressional power under the taxing and spending powers of Article 1, Section 8) and *Grand Rapids v. Ball*, 473 U.S. 373 (1985) (taxpayer Establishment Clause challenges to programs aiding non-public schools).

2. Decision citing 1968 *Flast* conflicts with other Circuit decisions as recent as 1999.

Decision denying Petitioner taxpayer standing is also in direct conflict with decisions made by the Fifth Circuit and Ninth Circuit itself as recently as 1999. *See Doe v. Beaumont Ind.Sch.Dist.*, 8 F.Supp.2d 596 (5th Cir. 1999) (taxpayer standing requires only that plaintiff pays taxes to relevant entity and those taxes be expended on disputed programs); Also *Doe v. Duncanville Ind. Sch. Dist.*, 70 F.3d 402, 408 (5th Cir. 1995); *Doe v. Madison Sch. Dist.*, 177 F.3d 789, 794 (9th Cir. 1999)(quoting *Doremus v. Brd. of Ed.*, 342 U.S. 429, 434 (1952):"Injury required for taxpayer standing is from improper expenditures of tax revenues..."); *Hewitt v.*

Joyner, 940 F.2d 1561 (9th Cir. 1991)(taxpayer standing to challenge tax funds spent on park with religious statues (even if little money spent));)); *Hoohuli v. Ariyoshi*, 741 F.2d 1169 (9th Cir.1984)(gave taxpayer standing to plaintiff who claimed additional tax burden when state spent specific amounts of tax revenue for impermissible racial class); *Cammack v. Waihee*, 932 F.2d 765, 770 (9th Cir. 1991)(taxpayer standing only when actual expenditure of funds spent on challenged activity; Good Friday paid leave).

All of Petitioner's claims – challenging national motto on currency, government prayer at Inaugurations, tax exemptions for a church practicing gender discrimination and taxpayer standing to challenge government support of discrimination – are of national importance. Decisions by the lower courts are in direct conflict with the Supreme Court and other Circuits. Only this Supreme Court can bring national uniformity on these issues by its review of this case.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

D. K. Christie

D. K. CHRISTIE, Petitioner Pro Se
P. O. Box 8871
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January 31, 2003

APPENDIX INDEX

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FILED
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CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY: (signed) DEPUTY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

D.K.CHRISTIE, Plaintiff, v. **UNITED STATES,** Defendant.	CASE NO. 00-CV-2392-J (AJB) **ORDER DISMISSING COMPLAINT WITHOUT LEAVE TO AMEND and WITH PREJUDICE**

INTRODUCTION

This matter comes before the court on Defendant United States' Motion to Dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6). Plaintiff D.K. Christie, appearing in propria persona, filed a complaint alleging that Defendant violated the Establishment Clause and the Fifth Amendment Equal Protection Clause of the U.S. Constitution by failing to prohibit: 1) the President of the United States from resting his hand on the Bible at Presidential Inaugurations, 2) the use of the word "God" in the U.S. Supreme Court's opening cry, 3) the use of the phrase, "so help me God" in oaths taken by government officials and legal professionals, 4) prayer and Bible verse reading at national televised memorial or dedication services, 5) the use of the national motto, "In God We Trust" on U.S. currency, and 6) tax

exemptions for religious organizations. Plaintiff lacks standing to bring claims one through four and fails to state a claim upon which relief may be granted in claims five and six. Accordingly, Defendants Motion to Dismiss is **GRANTED** without leave to amend and with prejudice.

BACKGROUND

Plaintiff believes the "primary doctrine as found in the Bible degrades her as a woman and demands her death for being non-Judeo-Christian." (Compl. at 5.) Plaintiff relies on several Bible verses, which Plaintiff refers to as "hate speech," to validate her belief that the Bible commands sexual violence against women and the murder of non-Judeo-Christians. (Compl. at 3 & Ex.1.) Because of these strong beliefs, Plaintiff is offended at the mere sight of the Bible or any use of the word "God" in public. (Compl. at 8.)

Plaintiff identifies several instances where references to God or the use of the Bible has affected her "societal and psychological" health. (Compl.at 8.) First, Plaintiff alleges that the government supports violence and discrimination against women by failing to prohibit the President from swearing with his hand on the Bible to defend the Constitution at Presidential Inaugurations. (Compl. at 1-2) Second, Plaintiff asserts that her right to equal protection was violated on June 12, 2000 when she witnessed the opening cry before the U.S. Supreme Court: "God save the United States and this honorable court." (Compl. at 3.) Plaintiff also challenges Chief Justice Rehnquist's use of

the phrase "so help me God," in administering an oath to new attorneys.

Third, Plaintiff claims that prayer and the reading of Bible passages by U.S. officials during televised memorial services on April 19, 2000 and October, 17, 2000, violated the Establishment Clause of the First Amendment.1 Fourth, Plaintiff alleges that she is "forced to participate in a state imposed profession of belief in a god who commands predatory violence against women" because she must circulate U.S. currency bearing the words "In God We Trust." Finally, Plaintiff claims that tax exemptions for religious organizations advocate government support for the discriminatory messages in the Bible and requires her to subsidize a religion she disagrees with.

The crux of Plaintiff's complaint is that the "Defendant U.S. has an affirmative duty to protect the rights of Plaintiff,...(and)defendants have failed to prevent violations of her civil rights (by) allowing government supported churches to...oppress...women. Defendant's deliberate actions denote government endorsement of...religion." (Compl.at 6-7)

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1. Plaintiff asserts that"(o)n April 19, 2000 plaintiff watched the televised dedication of the Oklahoma City National Memorial, (wherein) U.S. Senator Don Nickels read a passage from the Bible, Psalm 138." (Compl. at 4.) Plaintiff also asserts that "(o)n October 17, 2000 plaintiff watched the televised national memorial for victims of the USS Cole bombing" wherein Bible verses were read by an admiral and master sergeant. Id.

Plaintiff claims that the government's inaction leaves her forced to listen to the views of a religion that hates her and therefore leaves her feeling like an "outsider." Defendant's inaction, the Plaintiff contends, violates the Establishment Clause and her right to equal protection under the Federal Constitution.

Plaintiff seeks injunctive and declaratory relief, in addition to punitive damages and statutory penalties. First, Plaintiff requests a permanent injunction against the federal government, prohibiting the following: 1) the use of the Bible in government functions, particularly the presidential inauguration; 2) the use of "so help me God" as part of the oath government officials undertake prior to service; 3) religious invocations, prayers or devotional speeches by government agents at any government function or endeavor; 4) the use of the national motto, "In God We Trust," on U.S. currency or government property; and 5) tax exemptions for religious organizations. Second, Plaintiff requests that this Court find that each of the above-listed government practices violate the U.S. Constitution.

Defendant filed a Motion to Dismiss claiming the complaint fails to state a claim upon which relief can be granted and also that the Plaintiff lacks standing to bring this suit. Plaintiff responds that she has alleged sufficient personal harm to establish standing in this case.

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DISCUSSION

I. Federal Standing

A. Standard of Review

Standing is a threshold question of "whether the litigant is entitled to have the court decide the merits of the dispute(.)" Warth v. Seldin, 422 U.S. 490, 498 (1975). The source of this restriction on the courts' power is Article III's case or controversy requirement, which deems appropriate for judicial redress only those harms suffered by the plaintiff, "even though a court's judgment may benefit others collaterally." Id.at 499. The purpose of the restriction is to "assure that the complainant seeking to adjudicate his claim was the proper party to present the claim in an adversary context and in a form historically viewed as capable of judicial resolution." See Schlesinger v. Reservists Committee to Stop the War, 418 U.S. 208, 218, (1974). A case or controversy within the meaning of Article III exists where (1) the plaintiff has suffered an injury in fact that is both "concrete and particularized" and "actual or imminent, not conjectural or hypothetical"; (2) there is a causal connection between the plaintiff's injury and the alleged illegal act; and (3) it is likely that a favorable decision by the court would redress the injury. Lujan v. Defenders of Wildlife, 504 U.S. 555, 560 (1992); see also Friends of the Earth, Inc. v. Laidlaw Environmental Services, 528 U.S. 167, 180-81 (2000); Cantrell v. City of Long Beach, 241 F.3d 674, 679 (9th Cir. 2000).

The standing doctrine also includes several prudential concerns that are not constitutional requirements but "considerations that are part

of judicial self-government." Lujan v. Defenders of Wildlife, 504 U.S. 555, 560 (1992). For example, courts usually decline to exercise jurisdiction where the plaintiff's complaint is nothing more than a generalized grievance, "shared in substantially equal measure by all or even a large class of citizens." See e.g., Schlesinger v. Reservists to Stop the War, 418 U.S. 208 (1974); United States v. Richardson, 418 U.S. 166 (1974). Thus, even if the plaintiff is able to meet the constitutional requirements for standing, the court has "repeatedly refused to recognize a generalized grievance against allegedly illegal government conduct as sufficient for standing to invoke the federal judicial power." U.S. v. Hays, 515 U.S. 737, 743 (1995); Allen v. Wright, 468 U.S. 737 (1984); Cato v. U.S., 70 F.3d 1103, 1109 (9th Cir. 1995). "The rule against generalized grievances applies with as much force in the equal protection context as in any other." U.S. v. Hays, 515 U.S. 737, 743 (1995).

The party invoking federal jurisdiction bears the burden of establishing the existence of standing. Lujan, 504 U.S. at 561. "Those who do not possess Art.III standing may not litigate as suitors in the courts of the United States." See Valley Forge Christian College, 454 U.S. at 475.

B. Plaintiff Asserts Only a Generalized Grievance

Plaintiff lacks standing to bring this suit because she has not alleged a sufficient injury in fact and also because the complaint amounts to nothing more than a generalized grievance. First,

Plaintiff's claim that she has suffered a societal and psychological injury due to her "outsider" status, is insufficient because it does not state a personal, concrete and particularized grievance. See Valley Forge Christian College v. Americans United for Separation of Church and State, 454 U.S. 464, 485-86 (1982) (standing not recognized because plaintiffs failed to identify "any personal injury suffered...as a consequence of the alleged constitutional error, other than the psychological consequence presumably produced by observation of conduct with which one disagrees."). Second, her claim amounts to a general allegation of illegal government conduct and is therefore merely a generalized grievance, or the assertion of a collective "right to have the Government act in accordance with (the) law." *Allen v. Wright*, 468 U.S. 737, 754 (1984); *see Valley Forge Christian College v. Americans United for Separation of Church and State*, 454 U.S. 464, 482-83 (1982)(a "shared individuated right" to a Government that does not endorse religion is not a sufficient "judicially cognizable injury" to provide grounds for standing). The Complaint is therefore dismissed with prejudice and without leave to amend.

II. Plaintiff Fails to State a Claim Upon Which Relief May Be Granted

Under Fed. R.Civ. P. 12(b)(6), a defendant may bring a motion to dismiss a plaintiff's complaint for "failure to state a claim upon which relief can be granted." Fed. R Civ. P. 12(b)(6). This motion tests whether the allegations of the complaint satisfy the requirement of Fed. R. Civ. P. 8(a),

which requires a "short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a). Although there need not be an elaborate recitation of every fact a plaintiff may rely upon at trial, to withstand a motion to dismiss, there must be a finding that the Complaint gives the Defendant "fair notice of what the plaintiff's claim is and the grounds upon which it rests." Conley v. Gibson, 355 U.S. 41, 47 (1957).

A dismissal is warranted where "it appears beyond doubt that the plaintiff can prove no set of facts which would entitle him (her) to relief." Id. at 45-46. The Complaint should be liberally construed in favor of the Plaintiff, and its factual allegations taken as true. *Oscar v. University Students Co-Operative Ass'n.*, 965 F.2d 783, 785 (9th Cir. 1992), cert. denied, 506 U.S. 1020 (1992).

Plaintiff's claims that tax exemptions for religious organizations 2 and the use of the national motto on U.S. currency 3 violate her right to equal protection under the Fifth Amendment, are artfully pled Establishment Clause claims. Plaintiff alleges only that certain portions of the text of the Bible are discriminatory against women, not that Defendant has committed any acts of violence or discrimination against women. Thus, Plaintiff fails to state a claim against Defendant on equal protection grounds.

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2 See 26 U.S.C. Sec.1402(g)

3 See 31 U.S.C. Sec. 324(a)(directing that the national motto, "In God We Trust," appear on U.S. currency).

These claims also fail under the Establishment Clause. Plaintiff's claim that allowing tax exemptions for religious organizations and the claim that the use of the national motto, "In God We Trust" on U.S. currency violates the Establishment Clause have been previously decided by the United States Supreme Court or the Ninth Circuit Court of Appeals. 4 The United States Supreme Court has already decided that a "grant of a tax exemption is not sponsorship since the government does not transfer part of its revenue to churches but simply abstains from demanding that the church support the state." Walz v. Tax Commission of the City of N.Y. 397 U.S. 664, 675 (1970). The Ninth Circuit has established that the "national motto and the slogan on coinage and currency 'In God We Trust' has nothing whatsoever to do with establishment of religion." Aronow v. U.S., 432 F.2d 242 (9th Cir. 1970). Thus, under no set of facts, could the Plaintiff prevail on a claim that the tax exemptions or the use of the national motto on U.S. currency violate the Establishment Clause because these issues have already been litigated and decided. These claims are therefore dismissed without leave to amend and with prejudice for failure to state a claim.

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4. Because the Court finds that these charges fail to state a claim upon which relief may be granted, the Court does not address the question of whether Plaintiff has standing to assert these claims as a federal taxpayer.

CONCLUSION

For the reasons set forth above, the Court **GRANTS** Defendant's Motion to Dismiss without leave to amend and with prejudice.

IT IS SO ORDERED

DATED: April 23, 2001 (signed)_____
NAPOLEON A.JONES, JR
United States District Judge

cc: All Parties

FILED
APR 25 2001
CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
JUDGMENT IN A CIVIL CASE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

CASE NUMBER: 00cv2392-J(AJB)

D. Christie

v.

USA, Mission Valley Christian Fellowship, Nativity Catholic Church, State of California, Horizon Christian Fellowship North County

__ Jury Verdict. This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

_X_ Decision by Court. This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED THAT THE COURT GRANTS DEFENDANT USA'S MOTION TO DISMISS AND DISMISSES PLAINTIFF'S COMPLAINT WITHOUT LEAVE TO AMEND AND WITH PREJUDICE.....

April 25, 2001
Date

Roberta Westdal
Clerk
(signed)
Robin Y. Chambers
(By) Deputy Clerk
ENTERED ON April 25, 2001

NOT FOR PUBLICATION

FILED
MAR 21 2002
CATHY A. CATTERSON
CLERK, U.S.COURT OF APPEALS

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

D.K. CHRISTIE, Plaintiff-Appellant, v. UNITED STATES OF AMERICA, Defendant-Appellee.	No. 01-55962 D.C. No.00-CV-02392 MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
Napoleon A. Jones, District Judge, Presiding

Submitted March 11, 2002**
Before: CANBY, BEEZER and PAEZ, Circuit Judges.

D. K. Christie appeals pro se the district court's dismissal for failure to state a claim and

*This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit court except as may be provided by Ninth Circuit Rule 36-3.
**This panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

for lack of standing Christie's action alleging that the United States violated her rights under the Establishment Clause of the First Amendment and under the Equal Protection Clause of the Fifth Amendment. We have jurisdiction under 28 U.S.C. Sec. 1291. We review de novo, *Nat'l Comm. of Reform Party of U.S. v. Democratic Nat'l Comm.*, 168 F.3d 360, 363 (9thCir.1999), and we affirm.

The district court properly dismissed Christie's claim that tax exemptions for religious organizations violate the Establishment Clause of the First Amendment because granting a tax exemption does not entangle government and religion. See *Walz v. Tax Comm'n of New York City*, 397 U.S. 664, 678 (1970). The district court also properly dismissed Christie's equal protection claim. See *id.* at 686 n.6.

The district court also properly dismissed Christie's claim challenging the reference to religion in the national motto and in various slogans. See *Aronow v.United States*, 432 F.2d 242, 243 (9th Cir. 1970)(stating that "the national motto and the slogan on coinage and currency "In God We Trust" has nothing whatsoever to do with the establishment of religion.")

The district court properly dismissed Christie's remaining claims for lack of standing because she failed to allege a personal, concrete and particularized injury. *See Valley Forge Christian Coll. v. Americans United for Separation of Church & State, Inc.*, 454 U.S. 464, 472 (1982). Furthermore, Christie lacks standing as a federal taxpayer because her complain failed to allege an injury resulting from Congress'

exercise of power under the taxing and spending clause. *See Flast v. Cohen*, 392 U.S. 83, 102-03 (1968).

Because any amendment of Christie's complaint would be futile, dismissal without leave to amend was proper. See Gabrielson v. Montgomery Ward & Co., 785 F.2d 762, 766-67 (9th Cir. 1986).

AFFIRMED

FILED
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CATHY A. CATTERSON, CLERK
U.S.COURT OF APPEALS

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

D.K. CHRISTIE, Plaintiff-Appellant, v. UNITED STATES OF AMERICA, Defendant-Appellee.	No. 01-55962 DC# CV-00-02392-NAJ Southern California (San Diego) ORDER

Before: CANBY, BEEZER and PAEZ, Circuit Judges

The panel has voted to deny appellant's petition for panel rehearing and petition for rehearing en banc.

The full court has been advised of the petition for rehearing en banc and no judge has requested a vote on whether to rehear the matter en banc. *See* Fed. R. App.P.35.

The petition for panel rehearing and the petition for rehearing en banc are denied.

No further filings shall be accepted in this closed appeal.

RESEARCH Pfr.memos 01-55962.wpd